unsecured property and in the circumstances of this case, I am satisfied that the assistant official assignee's opposition to the request for adjournment is reasonable and proper.

I therefore refused the debtor's request for adjournment and ordered that he be adjudged a bankrupt.

Order accordingly.

Solicitors: *Joseph & Son.*

BOUSTEAD TRADING SDN. BHD. v. EMPLOYEES PROVIDENT FUND BOARD

[O.C.J. (Ibrahim J.) August 4, 1969]

[Kuala Lumpur — Originating Summons No. 271 of 1967]

Provident Fund — Person whose wages exceed $500 a month — Taking part-time employment at wages below statutory limit — Whether "employee" within Employees Provident Fund Ordinance, 1951, ss. 2 and 7(1).

The plaintiff employed one Lim from September 11, 1950 to January 31, 1966 at monthly wages above the statutory limits of $400 and $500 as laid down in the Employees Provident Fund Ordinance, 1951, as amended from time to time. In or about January 1958 Lim without the knowledge or consent of the plaintiff took part-time employment with one Seng Lee Co. Ltd. for which employment he was paid monthly wages below the said statutory limits. On March 11, 1967 the defendant notified the plaintiff that Lim was found liable to contribute to the provident fund in respect of his part-time employment with effect from January 1958 and in consequence the plaintiff was liable to pay arrears of contribution on Lim's behalf amounting to $4,220 in respect of his full-time employment with the plaintiff. The plaintiff complied with the demand of the defendant and paid the said amount under protest. On July 27, 1967 the defendant demanded payment of interest on contributions in arrears amounting to $1,645 and the plaintiff paid this sum, again under protest.

In this application the plaintiff sought for the determination of the following questions: (1) whether Lim was or was not at any material time an employee of the plaintiff and whether the plaintiff was or was not at any material time the employer of Lim within the meaning of the Employees Provident Fund Ordinance, 1951 and the Regulations made thereunder as amended from time to time; (2) whether the plaintiff was or was not then or at any material time had or had not been under any liability to pay contribution to the provident fund in respect of the said Lim.

Held: (1) although Lim's monthly wages from Seng Lee Co. Ltd. were all the time below the statutory limits but his monthly wages from the plaintiff were always above the statutory limits and there was no reason why "wages" in paragraph (2) of the First Schedule to the Ordinance should not be construed to mean not only the wages Lim was getting from the said company but also the wages he was concurrently getting from the plaintiff. As Lim had not become an "employee" when he took up employment with the company the plaintiff was not an employer of an employee within the meaning of section 7(1) and as Lim had not become liable to contribute the plaintiff was not caught by the proviso to section 2;

(2) accordingly (a) Lim was not at any material time an employee of the plaintiff and the plaintiff was not at any material time his employer within the meaning of the Ordinance and the Regulations made thereunder as amended from time to time; (b) the plaintiff was not then or at any material time had not been under any liability to pay contribution to the provident fund in respect of Lim;

(3) therefore (a) an account must be taken of all sums paid under protest by the plaintiff to the defendant by way of contributions to the Employees Provident Fund as demanded by the defendant together with interest on such arrears of contributions similarly paid by the plaintiff to the defendant upon the demand of the defendant and (b) the defendant must refund to the plaintiff the amount found due upon taking of the account with 6% interest thereon.

ORIGINATING SUMMONS.

D. L. Pickard for the plaintiff.

V. C. George for the defendant.

Cur. Adv. Vult.

Ibrahim J.: This is an application by the plaintiff for the determination of the following questions: —

(1) Whether Lim Itt Haw was or was not at any material time an employee of the plaintiff and whether the plaintiff was or was not at any material time the employer of Lim Itt Haw within the meaning of the Employees Provident Fund Ordinance No. 21 of 1951 and the Regulations made thereunder as amended from time to time,

(2) Whether the plaintiff is or is not now or at any material time has or has not been under any liability to pay contribution to the Employees Provident Fund in respect of the said Lim Itt Haw,

and for consequential orders.

The facts are not in dispute and may be summarised as follows. The plaintiff employed one Lim Itt Haw from 11th September, 1950, to 31st January, 1966, at monthly wages above the statutory limits of $400 and $500 as laid down in the Employees Provident Fund Ordinance, No. 21 of 1951, as amended from time to time. In or about January, 1958, Lim whilst in the employment of the plaintiff and without the knowledge or consent of the plaintiff took part-time employment with one Seng Lee Co. Ltd. (with whom he is still employed) for which employment he was paid monthly wages by Seng Lee Co. Ltd. below the said statutory limits.

On the 11th March, 1967, the defendant wrote to the plaintiff notifying the plaintiff that Lim was found liable to contribute to the Employees Provident Fund in respect of his part-time employment with the said Seng Lee Co. Ltd. with effect from January, 1958, and that in consequence the plaintiff was liable to pay arrears of contribution on Lim's behalf amounting to $4,220 in respect of his full-time employment with the plaintiff as aforesaid for the period February, 1958, to February, 1966. The plaintiff, in order to avoid the risk of prosecution, complied with the demand of the defendant and paid to the defendant the said sum of $4,220 under protest on the 14th July, 1967. On the 27th July, 1967, the defendant sent to the plaintiff Form EPF.1195 being a demand for payment of interest on contributions in arrears amounting to $1,645 and on the 9th August, 1967, the plaintiff paid the said sum of $1,645 to the defendant, again under protest.

It was the contention of the defendant that on Lim taking up employment with Seng Lee Co. Ltd., he became an employee within the definition of that word in section 2 and that by virtue of section 7(1) of the Ordinance not only Lim and Seng Lee Co. Ltd. but also the plaintiff as an "employer of a person who is an employee" became liable to pay contributions. It was also contended by the defendant that after he be-

came liable to contribute Lim also became an employee of the plaintiff as by virtue of the proviso to paragraph (2) of the First Schedule the wages he received from the plaintiff were deemed to be within the statutory limits.

Until 5th December 1958 the word 'employee' in section 2 was defined as follows: —

"'employee' means any person, not being a person of the descriptions specified in the First Schedule to this Ordinance, who has attained the age of sixteen years and has entered into a contract of service or apprenticeship, whether written or oral and whether expressed or implied to work for an employer."

By Ordinance No. 57 of 1958 it was amended by substituting "is employed under" for "has entered into".

Paragraph (2) of the First Schedule and its proviso with which we are concerned read: —

"Any person whose wages exceed five hundred dollars a month:

Provided that where after an employee has become liable to pay contributions as provided in section 7 of this Ordinance, or would at any time but for the provisions of sub-sections (1), (1A) and (2) of section 16 thereof have become so liable, the wages of such employee at any time exceed five hundred dollars a month such employee shall not by reason only of this paragraph be deemed to have become excluded from the provisions of this Ordinance, but his wages shall for all the purposes of this Ordinance be deemed to be five hundred dollars a month;"

Section 7(1) reads: —

"Subject to the provisions of section 16 of this Ordinance, every employee and every employer of a person who is an employee within the meaning of this Ordinance shall be liable to pay monthly contributions at the rate respectively set out in the Third Schedule to this Ordinance."

The determination of the questions raised in this application depends upon the proper construction of the relevant provisions of the Ordinance and in my view the proper approach to be made in construing the meaning of words and phrases in the Ordinance should be to give effect to the purpose or intention of the Ordinance, which is to ensure financial security to an "employee" in his old age or for his future disability. The contention that Lim who was not at any time otherwise an "employee" of the plaintiff had become one because of his part-time employment with Seng Lee Co. Ltd. seems to me to be an absurdity and is certainly inconsistent with the purpose or intention of the Ordinance and the answer to it may, in my view, be found in the proper interpretation of the definition of the word "employee" in section 2.

It is common ground that Lim had attained the age of 16 years and that he had entered into a contract of service to work for an employer but in my view he was excluded from the definition of the word "employee" when he entered into the contract of service to work for Seng Lee Co. Ltd. in January, 1958, because he was then a "person whose wages" exceeded "four hundred dollars a month" and his status had continued to be so for so long as he was employed by the plaintiff. (The statutory limit was raised to $500 with effect from 1st April 1963 *vide* L.Ns 65 and 115 of 1963). It is true that Lim's monthly wages from Seng Lee Co. Ltd. were all the time below the statutory limits but his monthly wages from the plaintiff were always above the statutory limits and I see no reason why "wages" referred to in paragraph (2) of the First Schedule should not be construed to mean not only the wages Lim was getting from Seng Lee Co. Ltd. but also the wages he was concurrently getting from the plaintiff with whom he had also entered into a contract of service. As Lim had not become an "employee" when he took up employment with Seng Lee Co. Ltd., the plaintiff was not an employer of an employee within the meaning of section 7(1) and as Lim had not become liable to contribute the plaintiff was not caught by the proviso to section 2.

I accordingly find that: —

(1) Lim Itt Haw was not at any material time an employee of the plaintiff and that the plaintiff was not at any material time the employer of Lim Itt Haw within the meaning of the Employees Provident Fund Ordinance No. 21 of 1951 and the Regulations made thereunder as amended from time to time.

(2) the plaintiff is not now or at any material time has not been under any liability to pay contribution to the Employees Provident Fund in respect of the said Lim Itt Haw.

In the event I order that

(a) an account be taken of all sums paid under protest by the plaintiff to the defendant by way of contributions to the Employees Provident Fund as demanded by the defendant together with interest on such arrears of contributions similarly paid by the plaintiff to the defendant upon the demand of the defendant.

(b) the defendant do refund to the plaintiff the amount found due upon taking of the account pursuant to paragraph (a) above with six per cent. interest thereon.

I also order that the defendant pay the plaintiff the costs of this application.

Order accordingly.

Solicitors: *Donaldson & Burkinshaw; Ng Ek Teong, Zain & Selvarajah.*

WONG CHEN FOH v. LO YU KYAU

[O.C.J. (Lee Hun Hoe J.) December 23, 1969]

[Kota Kinabalu — Originating Summons No. 59 of 1968]

Infants — Guardianship — Custody of children — Welfare of infants and wishes of parents — Paramount interest — Conduct of parents — Mother leaving father and subsequently living with a married man — Blameless conduct of father — Guardianship of Infants Ordinance (Sabah Cap. 54), ss. 5 & 11.

The respondent had left her husband the applicant in 1964, leaving a boy born in 1963 with him but taking with her their three daughters. In September 1964 the applicant took back the eldest daughter. In December 1964 the respondent obtained a maintenance order against the applicant for payment of maintenance for herself and the two children, but subsequently the monthly maintenance was cancelled. Sometime in 1965 she went to live with one Wong, a married